

# **EXHIBIT F**



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February 22, 2017

Via E-mail

Gabriel Assaad  
Kennedy Hodges LLP  
4409 Montrose Blvd, Suite 200  
Houston, TX 77006

Re: *In re Bair Hugger Forced Air Warming Devices Products Liability Litigation*, MDL 2666  
Plaintiffs' Subpoenas to Third Party Manufacturers of Patient Warming Devices

Dear Gabe:

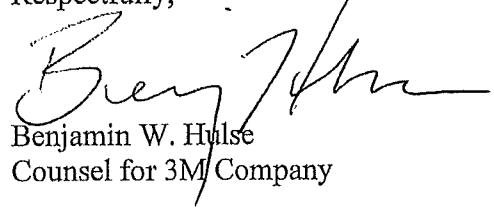
3M objects to the subpoenas you issued on February 17 to five third-party manufacturers of patient warming devices: Cincinnati Sub-Zero, Medline Industries, Stryker Corporation, Gaymar Industries, and MTRE Advanced Technologies Ltd. 3M requests that you immediately withdraw all five subpoenas. For reasons similar to those set forth in the recent brief filed by VitaHEAT Medical, LLC and 3M, the documents Plaintiffs request are neither relevant to the claims and defenses in this MDL and the (non-existent) benefit from this discovery does not outweigh the burden and expense to the parties and the third parties.

The patient warming devices that are the subject of the subpoenas are substantially different products from the Bair Hugger patient warming system and employ different warming technology. As addressed in the VitaHEAT brief, the overwhelming case law holds that a substantially different product may not be used to establish a feasible safer alternative design. *See, e.g., Theriot v. Danek Medical, Inc.*, 168 F.3d 253, 255-56 (5th Cir. 1999); *Simon v. Smith & Nephew, Inc.*, 990 F. Supp. 2d 395, 405 (S.D.N.Y. 2013); *Tersigni v. Wyeth*, 817 F.3d 364, 368 (1st Cir. 2016); *Massa v. Genentech Inc.*, No. H-11-70, 2012 WL 956192, at \*7 (S.D. Tex. Mar. 19, 2012). Plaintiffs have not come forward with any evidence to show that these products could meet the legal standard to be a feasible safer alternative design of the Bair Hugger patient warming system. If Plaintiffs do not withdraw these subpoenas by the end of this week, 3M will file a motion for a protective order.

Furthermore, you must keep us informed of any discussions you have with any of these third-party manufacturers and copy us on any correspondence.

3M Company's Objections to Plaintiffs' Subpoena to VitaHEAT Medical, LLC  
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Respectfully,



Benjamin W. Hulse  
Counsel for 3M Company

cc: Plaintiffs' Co-lead Counsel (by email)  
Cincinnati Sub-Zero (by FedEx)  
Medline Industries (by FedEx)  
Stryker Corporation (by FedEx)  
Gaymar Industries (by FedEx)  
MTRE Advanced Technologies (by FedEx)